

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-v.- : 15 Cr. 588 (ER)

AHMED MOHAMMED EL GAMMAL, :
a/k/a "Jammie Gammal," :

Defendant. :

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GOVERNMENT'S PROPOSED EXAMINATION
OF PROSPECTIVE JURORS

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The Government respectfully requests that the Court include the following questions in its examination of prospective jurors pursuant to Rule 24(a) of the Federal Rules of Criminal Procedure. The Court is requested to pursue more detailed questioning if a particular juror's answer reveals that further inquiry is appropriate. If further questions might influence other prospective jurors, or might prove embarrassing to the juror, the Government requests that such questioning take place at the bench or in the robing room. The Government further requests that all follow-up questioning conclude with an inquiry whether the particular fact or circumstances would influence the juror in favor of, or against, either the Government or the defendant.

Problems with Perception

1. Do any of you have a problem with hearing or vision which would prevent you from giving full attention to all of the evidence at this trial?
2. Do any of you take medication which would prevent you from giving full attention to all the evidence at this trial?

Do any of you have any difficulty in reading or understanding English?

The Charges

3. This is a criminal case. The defendant, AHMED MOHAMMED EL GAMMAL, otherwise known as “Jammie Gammal,” has been charged with the commission of a number of federal crimes in a four-count Indictment returned by a Grand Jury sitting in this District. The Indictment is not evidence, and is not proof of a crime. It is merely a document that specifies the criminal charges against the defendant. Those of you who are selected to sit on this jury will receive a detailed explanation of the charges at the conclusion of the case, but I would like to give you a brief summary of the charges now, so that we can determine whether there is anything about the charges that would make it impossible for you to sit as a fair and impartial juror. After I summarize the charges, I will ask a series of questions. If you have an affirmative response to any of my questions, and would feel uncomfortable responding in open court, let me know and I will hear your answer at the bench or in the robing room.

4. The Indictment charges the defendant with four counts: (i) providing material support to a designated foreign terrorist organization, specifically the Islamic State of Iraq and the Levant, or “ISIL,” also known as, among other things, the Islamic State of Iraq and Syria, “ISIS,” and the Islamic State; (ii) conspiring to provide material support to ISIL; (iii) aiding and abetting someone’s receipt of military-type training from ISIL; and (iv) conspiring to receive military-type training from ISIL. The Government alleges that, in 2014 and 2015, the defendant assisted another individual [name to be provided prior to trial] who traveled from the United States to train and fight with ISIL.

5. Do any of you have any personal knowledge of the charges in the Indictment as I have described it? Have you read or heard anything about this case? If so, is there anything that

you have read or heard that would cause you to feel that you cannot decide the facts of this case fairly and impartially?

Nature of the Charges

6. As I explained earlier, the defendant in this case is charged with offenses that involve a foreign terrorist organization—specifically, ISIL. Do any of you feel that you could not view fairly and impartially a case involving such charges? Has anyone formed an opinion that the actions charged in the Indictment, as I have described them to you, should not be crimes?

7. As you will learn in more detail at the conclusion of the case, the crimes charged in the Indictment prohibit providing, or attempting to provide, support or resources to certain terrorist organizations, including ISIL. There is no requirement that the Government prove the defendant—or his co-conspirators—actually were members of, or intended to join, ISIL; only that the defendant believed ISIL was the ultimate recipient of the things they agreed to provide, or attempted to provide. Do any of you feel that it should not be a crime to agree to provide, or attempt to provide things, whether in return for money or otherwise, to foreign terrorist organizations?

8. As I will explain in more detail later, the defendant is also charged with, among other things, conspiracy, or agreeing to commit a crime. Agreeing to commit a crime is itself a crime. Does any juror feel that the law should not separately prohibit agreements to commit crimes, as opposed to the commission of the crimes themselves, even if the underlying crime is not successfully completed?

9. Another aspect of conspiracy, which you will learn about in greater detail if you are selected to serve on this jury, is that the defendant and his co-conspirators need only knowingly and voluntarily enter into the agreement to commit a crime. Does any juror feel that the law

should not prohibit someone from agreeing to commit a crime?

10. Do any of you have any opinion about the enforcement of federal laws – in particular, the enforcement of federal terrorism laws – that might prevent you from being fair and impartial in this case? Do any of you believe that any of these crimes should not be illegal or that such laws should not be enforced? Do any of you have any opinions or beliefs about the enforcement of these or other federal laws that might prevent you from being fair and impartial in this case?

11. Do you have any feeling about the methods the United States Government, including the Central Intelligence Agency (CIA), the National Security Agency (NSA), and the military has used in responding to terrorism that you believe could potentially have an impact of your consideration of the evidence in this case?

12. Do you have any feelings about the prosecution of accused terrorists in courts like this that you believe would interfere with your ability to serve impartially as a juror in this case?

13. Do any of you believe that individuals accused of terrorism-related offenses should be tried only in military tribunals?

14. Some of the conduct in this case allegedly took place outside the United States. United States law provides that persons engaged in conduct occurring outside the United States may nevertheless be charged in United States courts for violations of federal laws that protect Americans. Do any of you believe that conduct that takes place outside the United States should not be a basis for American criminal charges?

15. Has any juror been involved in committing an offense involving terrorism or a foreign terrorist organization? Has any juror's relative, close friend, or associate been involved in committing such offenses? Has any juror, or any member of a juror's family, or any juror's

close friend, had any experiences of any kind, directly or indirectly, with committing such offenses?

16. Has any juror, whether directly or indirectly, been involved with, communicated with, or otherwise had any interaction with, members, affiliates, or supporters of ISIL? Does any juror have any relative, close friend, or associate who is, or has been, either directly or indirectly involved with, communicated with, or otherwise had any interaction with members, affiliates, or supporters of ISIL?

17. Do you have any feelings about Islam or Muslims that you believe would interfere with your ability to serve impartially as a juror in this case?

Knowledge of Trial Participants

18. Do any of you know, or have you had any direct or indirect dealings with the defendant AHMED MOHAMMED EL GAMAL, otherwise known as “Jammie Gammal?” *[Please ask the defendant to stand.]* Do any of you know, or have you had any direct or indirect dealings with any relatives, friends, or associates of the defendant?

19. To your knowledge, do you have any relatives, friends, associates, employers, or employees who know, or who may have had any dealings with, the defendant, or with any relatives, friends, or associates of his?

20. The Government is represented officially here, as in all cases where it is a party before this Court, by the United States Attorney for the Southern District of New York, Preet Bharara. Do any of you know Mr. Bharara? The conduct of the trial will be in the immediate charge of Assistant United States Attorneys Andrew DeFilippis, Brendan Quigley, and Negar Tekeei. They will be assisted by Special Agent Ghailan Stepho of the Federal Bureau of Investigation, and Vanessa Quinones, a paralegal in the United States Attorney’s Office. *[Please*

ask each to stand.] Do any of you know Mr. DeFilippis, Mr. Quigley, Ms. Tekeei, Mr. Stepho, or Ms. Quinones? Have any of you had any dealings, either directly or indirectly, with any of these individuals?

21. The defendant is represented by Sabrina Shroff, Annalisa Miron, and Daniel Habib of the Federal Defenders of New York. [*Please ask Ms. Shroff, Ms. Miron, and Mr. Habib to stand.]* Do any of you know Ms. Shroff, Ms. Miron, or Mr. Habib? Have any of you had any dealings, either directly or indirectly, with any of them? Have any of you had any dealings with the Federal Defenders of New York?

22. I am now going to give you a list of additional names of people, businesses, and locations that may be mentioned during the trial. When I am finished, please raise your hand if you know any of the people, businesses, or locations I name, or if you have had any direct or indirect dealings with them. [*A list of witnesses and other people, businesses, and locations likely to be mentioned during the trial will be supplied prior to voir dire.]*

23. Do any of you have relatives, friends, associates, employers, or employees who, to your knowledge, either know or have had some dealings with any of these individuals, businesses, or specific locations?

Relationship with the Government

24. Do any of you know, or have any association -- professional, business, or social, direct or indirect -- with any member of the staff of the United States Attorney's Office for the Southern District of New York; or with any member of the staff of the Federal Bureau of Investigation ("FBI"); the New York Joint Terrorism Task Force, which consists of the FBI, the New York City Police Department (the "NYPD"), and other law enforcement agencies; or with any other law enforcement agency?

25. Is any member of your family employed by a law enforcement agency, whether federal, state, or local?

26. Have you, or has any member of your family -- either as an individual or in the course of his or her business -- ever been a party to any legal action or dispute with the United States or any department, agency, or employee of the United States, or the FBI, or had any interest in any legal action or dispute with the U.S. Government, such as an income tax dispute?

27. Have any of you, either through any experience you have had, or anything you have seen or read, developed any bias or prejudice for or against the United States Attorney's Office, the FBI, or any other federal, state, or local government law-enforcement agency?

Prior Jury Service

28. Have you ever served as a member of a grand jury, whether in federal, state, or county court? If so, when and where?

29. Have you ever served as a juror in a trial in any court? If so, in what court did you serve and was it a civil or criminal case? What type of case was it? Without telling us what the verdict was, please tell us whether the jury reached a verdict in that case.

Experience as a Witness, Defendant, or Crime Victim

30. Have you, or has any relative or close friend of yours ever been involved, or appeared as a witness, in any investigation by a federal or state grand jury or by a Congressional or state legislative committee, licensing authority, or Governmental agency?

31. Have you or has any relative or close friend of yours ever been a witness or a complainant in any hearing or trial, whether federal, state or local?

32. Are you, or is any member of your family or close friend, now under subpoena or, to your knowledge, about to be subpoenaed, in any criminal case?

33. Have you or has any member of your family, any associate, or close friend, ever been charged with a crime?

34. To your knowledge, have you or has any relative, associate, or close friend ever been the subject of any investigation or accusation by any federal or state Grand Jury?

35. Have you, any family member, or any close friend been a victim of terrorism, either in this country or abroad? Have you, or has any friend or relative of yours, ever been a victim of a crime of any kind?

Ability to Render a Fair Verdict

36. *Law Enforcement Witnesses.* The witnesses in this case may also include agents with the FBI and other law enforcement personnel. Would you be more likely to believe or disbelieve a witness merely because he or she is a law enforcement officer?

37. *Expert Witnesses.* You may hear testimony in this case by expert witnesses. Have any of you had any experiences with experts, or do you have any general feelings about the use of experts, that would make it difficult for you to render a wholly fair and impartial verdict?

38. *Accomplice Witness.* You may hear testimony from one or more individuals the government claims may have had some involvement in the charged crime with Defendant. The individual or individuals will be called to testify in this case pursuant to an agreement with the Government for their testimony. Such witnesses often hope to avoid prosecution or seek a reduced sentence as a result of their cooperation with the government. The use of testimony from such witnesses is proper and lawful and is often a necessary law enforcement tool. Do you have any personal feelings about the government's use of such witnesses that would that would make it difficult for you to render a fair and impartial verdict in this case?

39. *Searches.* Some of the evidence may come from searches performed by law

enforcement officers in the United States. I instruct you that those searches were legal and that the evidence obtained from those searches is admissible in this case. Do you have strong feelings about searches conducted by law enforcement officers or the use of evidence obtained from searches at trial?

40. *Online Communications.* Some of the evidence in this trial may come in the form of emails or communications over social media that were sent and received by the defendant and others. I also instruct you that this type of evidence does not violate the rights of the defendant, and it is perfectly proper for this type of evidence to be introduced at trial for your consideration. With that in mind, do any of you have any feelings about the use of such online communications that would make it difficult for you to consider such evidence fairly and impartially at trial?

41. *Recordings.* Some of the evidence in this trial may come in the form of recordings of statements made by the defendant. I instruct you now that this type of evidence does not violate the rights of the defendant, and that it is perfectly proper for this type of evidence to be introduced at trial for your consideration. With that in mind, does any juror have any feelings about the use of recordings that would make it difficult for you to consider such evidence fairly and impartially as you would any other evidence?

42. *Translations.* Some of the evidence in this case may involve translations of documents or communications in a foreign language, specifically Arabic. Do any of you speak or understand Arabic? Because all jurors are to consider the same evidence, a juror who understands Arabic is to rely on the official English translation provided even if that translation differs from the juror's understanding of the testimony. Would you have any difficulty following that instruction?

43. *Particular Types of Evidence.* Does anyone have any expectations about whether

certain types of evidence, such as DNA or fingerprint analysis, should be presented by the Government at a criminal trial? Would any of you be unable to follow my instructions that the Government is not required to use any particular technique investigating and presenting evidence of a crime?

Persons Not on Trial

44. The defendant here is charged with acting with others, some of whom are not on trial here. You may not draw any inference, favorable or unfavorable, towards the Government or the defendant on trial from that fact. You also may not speculate as to the reason why other persons are not on trial. Is there any juror who cannot follow this instruction or who for this reason would have difficulty rendering a fair and impartial verdict?

Individual Juror's Background

45. The Government respectfully requests that the Court ask each juror to provide the following information:

- a. the juror's current county of residence and prior counties of residence during the last five years;
- b. the juror's highest level of schooling;
- c. the juror's current occupation and the name of the juror's employer;
- d. the period of employment with that employer;
- e. the same information concerning other employment of the juror within the last five years;
- f. whether the juror has other members of his/her household;
- g. the occupations of other adult members of the juror's household and of any children of the juror who are employed;

- h. from which sources the juror receives his/her daily news;
- i. which television and radio programs the juror watches or listens to on a regular basis;
- j. which Internet websites the juror visits on a regular basis;
- k. whether the juror is active in any associations, organizations, clubs, or unions; and
- l. what else the juror does in his/her spare time.

Function of the Court and Jury

46. The function of the jury is to decide questions of fact. You are the sole judges of the facts and nothing that the Court or the lawyers say or do may encroach in any way on your role as the exclusive fact finders. However, when it comes to the law you must take your instructions from the Court, and you are bound by those instructions. You may not substitute your own notions of what the law is, or what you think the law should be. At the conclusion of the case, your job will be to determine whether or not the defendant is guilty as charged in the Indictment. Do any of you have any bias or prejudice that might prevent or hinder you from accepting the instructions of the law that I will give you in this case?

47. Do any of you have any legal training, or have any relative or close friend who is an attorney? If so, would this for any reason prevent you from applying the law in this case as stated by the Court? Will each of you accept my instruction that you are not to discuss the case with anyone, including attorneys you may know, until you are excused as jurors?

48. Will each of you accept the proposition that the question of punishment is for the Court alone to decide, and that the possible punishment must not enter into your deliberations as to whether the defendant on trial here is guilty or not guilty?

49. Is there anyone who feels that even if the evidence established the defendant's guilt beyond a reasonable doubt, you might not be able to render a guilty verdict because of your own personal convictions or for any other reason unrelated to the law and the evidence?

50. Under your oath as jurors you are not to be swayed by sympathy. Will each of you accept the proposition of law that sympathy must not enter into the deliberations of the jurors as to the guilt or innocence of a defendant? You are to determine the guilt or innocence of the defendant solely on the basis of the evidence and subject to the law as I will charge you. Will you accept my instruction that you are not to be swayed by sympathy of any kind?

51. Do any of you have any religious, philosophical, or other beliefs that would make you unable to render a guilty verdict for reasons unrelated to the law and the evidence?

Other Biases

52. In these questions, I have tried to direct your attention to possible reasons why you might not be able to sit as a fair and impartial juror. Apart from any prior questions, do any of you have the slightest doubt in your mind, for any reason whatsoever, that you will be able to serve conscientiously, fairly, and impartially in this case and to render a true and just verdict without fear, favor, sympathy, or prejudice, and according to the law as it will be explained?

Requested Instruction Following Impaneling of the Jury

53. From this point on, until you retire to deliberate on your verdict, it is your duty not to discuss this case and not to remain in the presence of other persons who may be discussing this case. This rule about not discussing the case with others includes discussions even with members of your own family and friends.

54. If at any time during the course of this trial, any person attempts to talk to you or to communicate with you about this case, either in or out of the courthouse, you should

immediately report such an attempt to me, and to no one else, including your fellow jurors. In this regard, please let me explain to you that the attorneys and the defendant is not supposed to speak with any juror, even to offer a friendly greeting. So if you happen to see any of them outside this courtroom, they will and should ignore you. Please do not take offense. They will only be acting properly by doing?

55. If anything should happen involving any of you that is of an unusual nature, or which you think is something the Court should be told about, do not discuss it with any other juror. Simply give the clerk a note to the effect that you want to speak to me about it and I can then hear what it is and what you have to say. Of course, I do not expect anything unusual or improper to happen.

Dated: New York, NY
October 3, 2016

Respectfully submitted,

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Southern District of New York,
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